

Merit Systems Protection Board

§ 1201.24

on a grievance in accordance with § 1201.154(d).

[54 FR 53504, Dec. 29, 1989, as amended at 65 FR 25624, May 3, 2000]

§ 1201.22 Filing an appeal and responses to appeals.

(a) *Place of filing.* Appeals, and responses to those appeals, must be filed with the appropriate Board regional or field office. See § 1201.4(d) of this part.

(b) *Time of filing.* (1) Except as provided in paragraph (b)(2) of this section, an appeal must be filed no later than 30 days after the effective date, if any, of the action being appealed, or 30 days after the date of receipt of the agency's decision, whichever is later. Where an appellant and an agency mutually agree in writing to attempt to resolve their dispute through an alternative dispute resolution process prior to the timely filing of an appeal, however, the time limit for filing the appeal is extended by an additional 30 days—for a total of 60 days. A response to an appeal must be filed within 20 days of the date of the Board's acknowledgment order. The time for filing a submission under this section is computed in accordance with § 1201.23 of this part.

(2) The time limit prescribed by paragraph (b)(1) for filing an appeal does not apply where a law or regulation establishes a different time limit or where there is no applicable time limit. No time limit applies to appeals under the Uniformed Services Employment and Reemployment Rights Act (Public Law 103-353), as amended; see part 1208 of this title. See part 1208 of this title for the statutory filing time limits applicable to appeals under the Veterans Employment Opportunities Act (Public Law 105-339). See part 1209 of this title for the statutory filing time limits applicable to whistleblower appeals and stay requests.

(c) *Timeliness of appeals.* If a party does not submit an appeal within the time set by statute, regulation, or order of a judge, it will be dismissed as untimely filed unless a good reason for the delay is shown. The judge will provide the party an opportunity to show why the appeal should not be dismissed as untimely.

(d) *Method of filing an appeal.* Filing of an appeal must be made with the appropriate Board office by personal or commercial delivery, by facsimile, by mail, or by the Internet filing option described in paragraph (e) of this section.

(e) *Internet filing option.* An appeal may be filed electronically by using the electronic filing option available at the Board's Web site (<http://www.mspb.gov/e-appeal.html>).

(f) *Filing a response.* Filing of a response must be made with the appropriate Board office by personal or commercial delivery, by facsimile, by mail, or by electronic mail as specified in § 1201.5 of this part.

[54 FR 53504, Dec. 29, 1989, as amended at 58 FR 36345, July 7, 1993; 59 FR 31109, June 17, 1994; 59 FR 65235, Dec. 19, 1994; 62 FR 59992, Nov. 6, 1997; 62 FR 66814, Dec. 22, 1997; 64 FR 27899, May 24, 1999; 64 FR 54508, Oct. 7, 1999; 65 FR 5409, Feb. 4, 2000; 68 FR 59862, Oct. 20, 2003]

§ 1201.23 Computation of time.

In computing the number of days allowed for filing a submission, the first day counted is the day after the event from which the time period begins to run. If the date that ordinarily would be the last day for filing falls on a Saturday, Sunday, or Federal holiday, the filing period will include the first workday after that date.

Example: If an employee receives a decision notice that is effective on July 1, the 30-day period for filing an appeal starts to run on July 2. The filing ordinarily would be timely only if it is made by July 31. If July 31 is a Saturday, however, the last day for filing would be Monday, August 2.

[54 FR 53504, Dec. 29, 1989, as amended at 59 FR 31109, June 17, 1994]

§ 1201.24 Content of an appeal; right to hearing.

(a) *Content.* Only an appellant, his or her designated representative, or a party properly substituted under § 1201.35 may file an appeal. Appeals may be in any format, including letter form. Electronic appeals must be filed using the Board's Internet filing option. All appeals must contain the following:

(1) The name, address, and telephone number of the appellant, and the name

§ 1201.25

and address of the agency that took the action;

(2) A description of the action the agency took and its effective date;

(3) A request for hearing if the appellant wants one;

(4) A statement of the reasons why the appellant believes the agency action is wrong;

(5) A statement of the action the appellant would like the judge to order;

(6) The name, address, and telephone number of the appellant's representative, if the appellant has a representative;

(7) The notice of the decision to take the action being appealed, along with any relevant documents;

(8) A statement telling whether the appellant or anyone acting on his or her behalf has filed a grievance or a formal discrimination complaint with any agency regarding this matter; and

(9) The signature of the appellant or, if the appellant has a representative, of the representative. If using the Internet filing option, the appellant or the appellant's representative must complete the electronic signature portion of the Board's Internet filing option in accordance with instructions at the Board's Web site, as set forth in § 1201.5 of this part.

(b) An appellant may raise a claim or defense not included in the appeal at any time before the end of the conference(s) held to define the issues in the case. An appellant may not raise a new claim or defense after that time, except for good cause shown. However, a claim or defense not included in the appeal may be excluded if a party shows that including it would result in undue prejudice.

(c) *Use of Board form or Internet filing option.* An appellant may comply with paragraph (a) of this section, and with § 1201.31 of this part, by completing MSPB Form 185, or by completing all requests for information marked as required in the Internet filing option. Both MSPB Form 185 and the Internet filing option can be accessed at the Board's Web site (<http://www.mspb.gov/e-appeal.html>).

(d) *Right to hearing.* Under 5 U.S.C. 7701, an appellant has a right to a hearing.

5 CFR Ch. II (1–1–04 Edition)

(e) *Timely request.* The appellant must submit any request for a hearing with the appeal, or within any other time period the judge sets for that purpose. If the appellant does not make a timely request for a hearing, the right to a hearing is waived.

[54 FR 53504, Dec. 29, 1989, as amended at 68 FR 59862, Oct. 20, 2003]

§ 1201.25 Content of agency response.

The agency response to an appeal must contain the following:

(a) The name of the appellant and of the agency whose action the appellant is appealing;

(b) A statement identifying the agency action taken against the appellant and stating the reasons for taking the action;

(c) All documents contained in the agency record of the action;

(d) Designation of and signature by the authorized agency representative; and

(e) Any other documents or responses requested by the Board.

§ 1201.26 Number of pleadings, service, and response.

(a) *Number.* The appellant must file two copies of both the appeal and all attachments with the appropriate Board office, unless the appellant files an appeal under the Board's Internet filing option.

(b) *Service—(1) Service by the Board.* The appropriate office of the Board will mail a copy of the appeal to each party to the proceeding other than the appellant. It will attach to each copy a service list, consisting of a list of the names and addresses of the parties to the proceeding or their designated representatives.

(2) *Service by the parties.* The parties must serve on each other one copy of each pleading, as defined by § 1201.4(b), and all documents submitted with it, except for the appeal. They may do so by mail, by facsimile, by personal or commercial delivery, or by electronic mail in accordance with § 1201.5 of this part. Documents and pleadings must be served upon each party and each representative. A certificate of service stating how and when service was made must accompany each pleading. The parties must notify the appropriate